IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

ORDER

Babulal vs. Judge, Labour Court,Udaipur & Ors.
(S.B.C.Writ Petition No.3914/01)

Date of Order :- 16th October, 2006.

PRESENT

HON'BLE MR.JUSTICE MOHAMMAD RAFIQ

Mr.S.D.Purohit, Advocate for the petitioner.
Mr.Rameshwar Dave,Dy.Government Advocate for the State.

The petitioner Babulal in the present writ petition has challenged the award dated 16.9.1999 passed by the learned Industrial Tribunal cum Labour Court, Udaipur(in short "the Labour Court") in so far as it has denied the relief of reinstatement to him and instead directed payment for lump sum compensation.

A reference was made by the appropriate Government to learned Labour Court that on the question

whether the removal of the petitioner workman by the respondents-management from service on 1st September, 1993 was legally justified and if not what relief the workman was entitled to.

The workman was engaged as Beldar on 1st May, 1992 as unskilled labour @ 22/- per day on daily wage basis and was eventually removed by a verbal order on 1st September, 1993. According to workman his removal was made without complying with the provisions of Section 25-F of the Industrial Disputes Act, 1947(in short "the Act of 1947") inasmuch as neither any notice nor any compensation was given/paid to him at the time of retrenchment even though he had completed more than 240 days in the calendar year immediately proceeding thereto.

The case of the management before the Labour Court was that the workman was engaged on 1st May, 1992 for a period of one month on daily wage basis and he worked with them only for three months up to July, 1992. He did not

complete 240 days in any calendar year with the respondents and there was therefore no question of any violation of Section 25-F of the Act of 1947.

Leaned Labour Court on consideration of the evidence and arguments of the parties concluded that the workman was engaged in the water project on temporary basis and with the completion of work, there was no employment available with the respondent. This finding was given on consideration of the evidence led by the management that there was no financial sanction by the government to further continue the work of this nature. The Labour Court however concluded that the petitioner worked for the period from 1.5.1992 to 31.3.1993 i.e. for 16 months . However the appointment of the petitioner was not made by any regular mode of recruitment and that he worked for only 16 months way back in the year 1992-93 . The management now cannot reinstate him when already six years have gone by since the date of retrenchment and therefore learned Labour Court held that ends of justice would be made by awarding to workman

the amount of lump sum compensation in lieu of reinstatement. In doing so, learned Labour Court relied upon the judgments of the Hon'ble Supreme Court in Rostan Rohan vs. Central Industrial Tribunal, 1995 SCC(L&S) p.142, Surjeet Kaur vs. United Corporation Bank, 1995 SCC(L&S) p.529, Gujarat Road Transport Corporation vs. Mullu Amla, 1995 SCC (L&S) p.141, Saiyad Azam Hussain vs. Andhra Bank, 1995 SCC (L&S) p.573 and Geedarwa Cooperative Marketing vs. Presiding Officer, L.L.J. 1996(1) p.644.

Having considered the award of the learned Labour Court in the light of the arguments advanced by the learned counsel for the parties, I do not find that the award suffers from any error apparent on the face of record.

A Division Bench of this Court in State of Rajasthan & Ors. vs. Rashid Mohammad, 2004(5) WLC(Raj.) p.463 was dealing with the case where the respondent Rashid Mohammad was appointed as a Guard on daily wages basis on 01.02.1990 and was finally removed on 17.05.1994. The Division Bench

while taking into consideration the facts that already nine years have elapsed, modified the judgment of the learned Single Judge by directing that instead of reinstatement, the petitioner would be entitled to a lump sum amount of Rs.50,000/- as compensation for full and final settlement of all his claims. In doing so the learned Division Bench of this Court relied upon the various judgments of Hon'ble Supreme Court which may be summarized as under:-

> **(1)** In **Hindustan Tin Works Pvt. Ltd. Vs. Employees of Hindustan Tin Works Pvt. Ltd.** AIR 1979 SC 95, the Hon'ble Supreme Court held that the Court has discretion to award compensation instead of reinstatement if the circumstances of a particular case are unusual or exceptional so as to make the reinstatement inexpedient or improper.
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> **(2).** In **Chandu Lal Vs. The management of M/s. PAN American World Airways,** AIR 1985 SC 1128, the Apex Court, instead of granting the relief of reinstatement, granted compensation.
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> **(3).** In **Gujarat State Road Transport Corporation & Anr. Vs. Malu Amra,** AIR 1994 SC 112, the Hon'ble Supreme Court considered the aspect of long lapse of time between the termination and the date of Award and held that the grant of compensation in lieu of reinstatement was proper.

(4). In **Sain Steel Products Vs. Naipal Singh & ors.,** AIR 2001 SCW 2426, the Hon'ble Apex Court granted a sum of Rs.50,000/- to the workman in lieu of reinstatement or back wages on the ground that there had been an inordinate delay as the services had been terminated long back.

(5). In **O.P. Bhandari Vs. Indian Tourism Development Corporation Ltd. & Ors.,** (1986) 4 SCC 337, the Hon'ble Supreme Court propounded the formula to award compensation equivalent to 3.33 years' salary (including allowances as admissible) on the basis of the last pay and allowances drawn by the appellant therein, to be a reasonable amount to be awarded in lieu of reinstatement as the appellant therein had served for eight years.

(6). In **Rolston Johan Vs. Central Government Industrial Tribunal and Labour Court & Ors.,** AIR 1994 SC 131, the Hon'ble Supreme Court granted a lump sum amount of Rs.50,000/- as compensation in full and final settlement of the claim and in lieu of reinstatement and consequential benefits to the workman.

In another judgment in Arjun Singh & 4 Ors. vs. Labour Court, Jodhpur & Ors., 2004(4) WLC(Raj.) p.145 a Division Bench of this Court was dealing with a case in which the workman Arjun Singh was appointed on 01.01.1988 and

was removed from service on 01.04.1990. Apart from this, similar case of two more workmen was also considered therein. The matter came to the learned Labour Court on a reference being made to it by the appropriate Government. The Labour Court found that the termination of workman was in violation of Section 25-F of the Industrial Disputes Act. However, instead of directing reinstatement of the workman it granted compensation in lieu of reinstatement. While dealing with the said case, the Division Bench of this Court made the following observations:-

> "**5.** The appellants did not go through a process of selection and were merely appointed on daily wages basis. The time lag in each case between the passing of the award and the date of termination is quite a substantial one. Again between date of termination of services of the appellants and as of now several years have3 gone by. In the circumstances the Labour Court and the learned Single Judge were right in not foisting the appellant on the employer after such long spells of time. The appellants cannot be directed to be reinstated now as they have been out of touch with their respective jobs of long. It is well known that faculties rust when they are not used for long. An employee who is out of job for number of years, loses his proficiency, productivity and efficiency. In case the appellants are directed to be reinstated after several years it will lead to

> complex situations. Not only question of their seniority, promotion and emoluments would arise, it will also affect the seniority and chances of promotion of employees who have been working continuously with respondents after the termination of the services of the appellants.
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> **6.** We are conscious of the fact that the normal rule is to direct reinstatement of a workman whose services have been terminated in violation of the industrial law, but reinstatement cannot be directed in every case. The question whether an employee should be reinstated or not depends upon various factors viz. (1) The nature of employment; (2) the period between the date of appointment and date of termination i.e. length of service; (3) the period between the date of termination and date of award; (4) the period between the date of termination and the conclusion of the proceedings. In case a person is appointed for a short period of time without making him to through a process of selection and the gap between the date of termination and the award/conclusion of proceedings is a large one, ordinarily the employee should be awarded compensation in lieu of reinstatement when it is found that his termination was in violation of the provisions of Section 25F of the Industrial Disputes Act."

The Hon'ble Supreme Court in the case of Ratan Singh Vs. Union of India & Anr. reported in (1997) 11 SCC 396, wherein nearly 20 years had elapsed from the date when

the services of the workman were terminated in violation of Section 25-F of the Industrial Disputes Act, while directing the payment of compensation in lieu of reinstatement observed as under:-

> "The services of the appellant were terminated in the year 1976. Nearly 20 years have elapsed since then. In these circumstances, we are not inclined to direct reinstatement of the appellant. But having regard to the facts and circumstances of the case, we direct that a consolidated sum of Rs.25,000/- be paid to the appellant in lieu of compensation for back wages as well as reinstatement."

In the present case also on given facts it would be evident that (i) the petitioner worked with the respondents for a short duration of one year and sixteen months only (ii) reference of the dispute to the labour court was made after two years and six months (iii) award was passed by the labour court after almost six years from the date of retrenchment and (iv) a long period of thirteen years has gone by now when this writ petition is being disposed of. In these circumstances, the

award passed by the learned Labour Court does not suffer from any error apparent on the face of record.

In view of above, I do not find any merit in this writ petition. The same is therefore dismissed. There shall be no order as to costs.

(MOHAMMAD RAFIQ),J.